

**STATEMENT OF
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FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE
Before the
U.S. Senate, Committee on Energy and Natural Resources
Subcommittee on Forests and Public Land Management
March 29, 2000**

Concerning S.1969, Outfitter Policy Act of 1999

Mr. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to testify on S.1969, the Outfitter Policy Act of 1999. With me today is Kenneth Karkula, Recreation Special Uses program manager.

We defer to the Department of the Interior for the Administration's position on this bill, but concur in the Department's assessment that S.1969 would severely limit the agency's flexibility to manage the outfitter and guide program and be responsive to the needs of the public.

Mr. Chairman, before discussing our concerns with the bill I would first like to express just a few of the positive benefits and some of the challenges facing our outfitter and guide program.

We agree with the view you stated when you introduced this bill: "Many Americans want and seek out the skills and experience of commercial outfitters and guides to help them enjoy a safe and pleasant journey through our forests and deserts and over the rivers and lakes that are the spectacular destinations for many visitors to our federal lands."

There are millions of people who lack outdoor skills and who have never experienced the beauty and diversity of their public lands. Many of these people desire the safe environment that licensed guides and outfitters provide. There are numerous examples where outfitters and guides have helped users achieve a very positive out of doors experience, including outfitters who take physically challenged or economically disadvantaged children into the Wilderness or assist an arthritic man who wants to take his grandson on his first hunting trip. In addition, as the agency has become more involved with various tourism associations, we have learned that many international groups wish to provide eco-tourism trips to the United States to visit our public lands.

Mr. Chairman, you also stated during the bill's introduction, that the agencies represented here today used practices that historically have worked well for the outfitters, visitors, and other user groups, as well as for the federal land managers in the field. I would like to thank you for the recognition of the agencies' efforts to maintain a successful outfitter and guide program.

I also agree that managing the increasing competition for the nation's recreation resources today is challenging. Outfitting and guiding is one of the fastest growing uses of federal lands today.

We currently have approximately 6,000 permit holders that provide very necessary and sought-after services. These services range from traditional hunting and fishing trips to llama treks: from jeep tours and white water rafting, to guided hikes and prehistoric treks and everything in between.

With this variety of outfitting and guiding activities on federal lands and their potential impact on the resources, we believe that the outfitter and guide administrative system must address concerns of public health and safety, provide a pleasant experience for the visitor, and protect the interests of the government. Flexibility is an essential ingredient of a successful system. It is our position that this bill does not meet those objectives.

I would like to discuss several major problems with the bill including

- The bill codifies very detailed direction that is traditionally found in regulations and policy. These provisions severely limit agency flexibility to address specific needs as they arise. In addition, our current policy was developed through the Administrative Procedure Act (APA), a process that included public involvement. This policy takes into account the needs and interests of the outfitting and guiding industry and the public in general. Any changes to the current policy would also be implemented with public involvement in compliance with APA.
- Another serious concern is the question of diminished liability of outfitters and guides, which would result in increased liability of the United States and decreased incentive for outfitters and guides to operate safely. In several respects, the bill would substantially reduce the protection from liability currently afforded the United States under indemnification provisions in Forest Service regulations and permits. Under S.1969, outfitters and guides would be liable only for torts, not for other sources of loss or damage to persons or property, such as losses arising under pollution control laws

In addition, the standard for indemnification in the bill is significantly narrower than the standard in agency regulations and permits. The bill also would allow outfitters and guides to require their customers to sign waivers of liability, which could increase the liability of the United States and run counter to the public interest. To the extent the bill would shield outfitters and guides from liability, the bill would decrease their incentive to obtain insurance that protects the interests of the United States and would decrease their incentive to operate safely.

- The language in the bill providing for “a reasonable opportunity . . . to realize a profit” and a “fair and reasonable return to the United States through appropriate fees” and taking into account “the obligations of the outfitter” and “economic conditions” does not currently exist in applicable law and policy. This new language would impose vague, subjective standards that could spawn litigation and make it difficult for the agencies to

impose a land use fee based on the fair market value of the use of the land for outfitting and guiding. Fair market value is the standard for establishing fees for land use under the Independent Offices Appropriations Act and Office of Management and Budget Circular No. A-25.

- The inability to make land use allocations in accordance with applicable law and the public interest. Distinctions in the bill with respect to allocations of use and the bases for adjusting them would prevent the Forest Service from allocating land use in accordance with forest land and resource management plans that are required by the National Forest Management Act and that are adopted with significant public input.
- Eliminate the necessary discretion in the renewal and termination of outfitter permits:
 - 1 The bill's renewal provision would confer a benefit that currently no other recreation special use permit holder enjoys, even ski areas that have significant investments on National Forest System lands. For all recreation special uses, the permit expires at the end of its term, and the Forest Service retains the discretion to determine whether to renew the use, and if so, under what terms and conditions
 - 2 The bill would establish a lengthy ten-year term for permit holders that are new and untested. While we understand that a permit term longer than one year is needed for outfitters and guides that have performed successfully, a ten-year term is inappropriate for inexperienced outfitters and guides and would make outfitting and guiding businesses operating on Federal lands much less competitive.
 - 3 The bill would severely limit the agencies' ability to use competition to select permit holders. This method is not only fair where competition for limited opportunities exists; this method is also one of the best for selecting the most qualified applicant and establishing the fair market value of the land use.

4. The bill would authorize transfer of permits and would prevent the agencies from imposing new terms and conditions in transferred permits, thereby greatly reducing the agencies' flexibility to address changing conditions and circumstances.
 5. The bill would greatly limit the agencies' ability to revoke a permit, even for poor performance.
- The record-keeping requirements imposed on outfitters and guides in the bill are vague and inadequate. The requirements imposed on the agencies for establishing record-keeping requirements are vague and subjective and could impinge on the agencies' ability to require adequate record keeping. The access to records provision is unclear and appears to cut off the Government's access to outfitters' and guides' records after a certain point, which would hamper the agencies' ability to administer and audit outfitting and guiding businesses.

In conclusion, it is our belief that this bill will not improve our outfitter and guide program, nor will it adequately protect the interests of the United States and the recreating public. We are willing to continue to work with our partner agencies, Congress, the industry, and the recreating public to resolve many of the industry's concerns so that they can continue to provide this much needed public service.

This concludes my prepared remarks. I would be pleased to answer any questions you may have.